

HOUSE BILL 348

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

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AN ACT

RELATING TO UTILITIES; REQUIRING WATER UTILIZATION PLANS FOR CERTAIN ELECTRIC POWER GENERATING PLANTS; PRESCRIBING APPROVAL PROCEDURES; CHANGING RULING DEADLINES AND THE SIZE OF PLANTS SUBJECT TO LOCATION APPROVAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended) is amended to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be

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1 needed to meet growing demands for electric services and cannot
2 be built without in some way affecting the physical environment
3 where these plants, facilities and transmission lines are
4 located. The legislature therefore declares that it is the
5 purpose of this section to provide for the supervision and
6 control by the commission of the location within this state of
7 new plants, facilities and transmission lines for the
8 generation and transmission of electricity for sale to the
9 public.

10 B. ~~[No]~~ A person, including ~~[any]~~ a municipality,
11 shall not begin the construction of ~~[any]~~ a plant designed for
12 or capable of operation at a capacity of ~~[three hundred]~~ fifty
13 thousand kilowatts or more for the generation of electricity
14 for sale to the public within or without this state, whether or
15 not owned or operated by a person that is a public utility
16 subject to regulation by the commission, or of transmission
17 lines in connection with such a plant, on a location within
18 this state unless the location has been approved by the
19 commission. For the purposes of this section, "transmission
20 line" means ~~[any]~~ an electric transmission line and associated
21 facilities designed for or capable of operations at a nominal
22 voltage of two hundred thirty kilovolts or more, to be
23 constructed in connection with and to transmit electricity from
24 a new plant for which approval is required.

25 C. Application for approval shall contain all

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1 information required by the commission to make its
2 determination, be made in writing setting forth the facts
3 involved and be filed with the commission. The commission
4 shall, after a public hearing and upon notice as the
5 commission may prescribe, act upon the application. The
6 commission may condition its approval upon a demonstration by
7 the applicant that it has received all necessary air and
8 water quality permits.

9 D. ~~[No]~~ An approval pursuant to this section
10 shall not be required for construction in progress on the
11 effective date of this section or for additions to or
12 modifications of an existing plant or transmission line.

13 E. The commission shall approve the application
14 for the location of the generating plant unless the
15 commission finds that the operations of the facilities for
16 which approval is sought will not be in compliance with all
17 applicable air and water pollution control standards and
18 regulations existing. The commission shall not require
19 compliance with performance standards other than those
20 established by the agency of this state having jurisdiction
21 over a particular pollution source.

22 F. The commission shall approve the application
23 for the location of the transmission lines unless the
24 commission finds that the location will unduly impair
25 important environmental values.

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1 G. ~~[No]~~ An application shall not be approved
2 pursuant to this section ~~[which]~~ if it violates an existing
3 state, county or municipal land use statutory or
4 administrative regulation unless the commission finds that
5 the regulation is unreasonably restrictive and compliance
6 with the regulation is not in the interest of the public
7 convenience and necessity, in which event and to the extent
8 found by the commission, the regulation shall be inapplicable
9 and void as to the siting. When it becomes apparent to the
10 commission that an issue exists with respect to whether a
11 regulation is unreasonably restrictive and compliance with
12 the regulation is not in the interest of public convenience
13 and necessity, it shall promptly serve notice of that fact by
14 certified mail upon the agency, board or commission having
15 jurisdiction for land use of the area affected and shall make
16 the agency, board or commission a party to the proceedings
17 upon its request and shall give it an opportunity to respond
18 to the issue. The judgment of the commission shall be
19 conclusive on all questions of siting, land use, aesthetics
20 and any other state or local requirements affecting the
21 siting.

22 H. Nothing in this section shall be deemed to
23 confer upon the commission power or jurisdiction to regulate
24 or supervise any person, including a municipality, that is
25 not otherwise a public utility regulated and supervised by

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1 the commission, with respect to its rates and service and
2 with respect to its securities, nor shall any other provision
3 of the Public Utility Act be applicable with respect to such
4 a person, including a municipality.

5 I. The commission shall issue its order granting
6 or denying the application within [~~six~~] nine months from the
7 date the application is filed with the commission. Failure
8 to issue its order within [~~six~~] nine months is deemed to be
9 approval of the application; provided, however, that the
10 commission may extend the time for granting approval for a
11 transmission line that is subject to this section for an
12 additional ten months upon finding that the additional time
13 is necessary to determine if the proposed location of the
14 line will unduly impair important environmental values."

15 Section 2. A new section of the Public Utility Act is
16 enacted to read:

17 "[NEW MATERIAL] ELECTRIC POWER GENERATING PLANTS--WATER
18 UTILIZATION PLAN--APPROVAL PROCESS.--

19 A. Notwithstanding the provisions of Subsection H
20 of Section 62-9-3 NMSA 1978, a person, including a
21 municipality, shall not begin construction or expansion of an
22 electric power generating plant that will consumptively use
23 more than one hundred acre-feet of water in a year for the
24 sale of electricity to the public within or without this
25 state, whether or not owned or operated by a person that is a

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1 public utility subject to regulation by the commission,
2 unless that person has submitted to the commission an
3 application for that construction or expansion that has been
4 approved by the commission. In considering an application to
5 construct or expand a plant, the commission shall require the
6 applicant to submit a water utilization plan that:

7 (1) compares alternate water management
8 practices, including effects on capital and operating costs,
9 water use, wastewater management and energy efficiency; and

10 (2) includes information about alternative
11 power plant cooling methods, including dry cooling, hybrid
12 wet-dry cooling and the use of produced or other sources of
13 waste or degraded water.

14 B. The commission shall submit the water
15 utilization plan to the state engineer. Within forty-five
16 days, the state engineer shall evaluate the proposed water
17 utilization plan and provide the commission with a
18 determination of whether the proposed plan is consistent with
19 the conservation of water within the state. The state
20 engineer may recommend to the commission any alternatives for
21 consideration and shall comment on whether the plan meets the
22 criteria set forth in Subsection C of this section.

23 C. The commission shall develop criteria for
24 evaluating electric power generating plant water utilization
25 plans and shall reject an application that in its judgment

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1 does not meet the criteria. The criteria shall include:

2 (1) total all-in life-cycle costs for water
3 acquisition, treatment, pumping, use and disposal;

4 (2) total all-in life-cycle costs for
5 construction and operating costs;

6 (3) estimated impact of these costs on the
7 retail cost of electric power;

8 (4) energy efficiency gains or losses; and

9 (5) any other derivative effects such as air
10 pollution increases or decreases.

11 D. An applicant shall provide the commission at
12 the time of filing the application with the commission proof
13 that notice of the application, including a description of
14 the proposed construction or expansion of the electric power
15 generating plant and how to obtain further information, has
16 been:

17 (1) provided by certified mail to the owners
18 of record, as shown by the most recent property tax schedule,
19 of all properties within one-half mile of the property on
20 which the construction or expansion is proposed to be located
21 on or before the newspaper publication date required by this
22 subsection;

23 (2) provided by certified mail to all
24 municipalities and counties and tribal organizations within a
25 ten-mile radius of the property on which the construction or

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1 expansion is proposed to be located on or before the
2 newspaper publication date required by this subsection;

3 (3) published once in a newspaper of general
4 circulation in the county in which the property on which the
5 construction or expansion is proposed to be located; provided
6 that this notice shall appear in either the classified or
7 legal advertisements section of the newspaper and at one
8 other place in the newspaper calculated to give the general
9 public the most effective notice and shall be printed in both
10 English and Spanish;

11 (4) posted in at least four publicly
12 accessible and conspicuous places on or before the newspaper
13 publication date required by this subsection, including the
14 entrances to the existing or proposed plant, if the entrance
15 is publicly accessible and conspicuous;

16 (5) mailed to all persons who have made a
17 written request to the commission for notice of this
18 application on or before the newspaper publication date
19 required by this subsection; and

20 (6) mailed by certified mail to all persons
21 on a list that shall be maintained by the commission of
22 individuals and organizations who have requested notice of
23 applications made pursuant to this section.

24 E. Within thirty days of receiving a
25 determination from the state engineer pursuant to Subsection
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1 B of this section, the commission shall establish a date for
2 a public hearing on the application. At least thirty days
3 but no more than forty-five days prior to that date, the
4 commission shall provide public notice of the date, location
5 and subject of the hearing. The notice shall be distributed
6 according to the public notice requirements described in
7 Subsection D of this section.

8 F. The commission shall issue its order granting
9 or denying the application within nine months of the date the
10 application is filed with the commission. If the commission
11 does not issue its order within the nine months, the
12 application shall be deemed approved.

13 G. The information required to be submitted
14 pursuant to this section and the findings required by this
15 section are supplemental to and do not supersede information
16 and findings otherwise required by law.

17 H. The requirements of this section apply only to
18 electric power generating units placed into service on or
19 after July 1, 2005 and do not apply to units under
20 construction before July 1, 2005. In addition, any expansion
21 of an electric power generating plant that has been placed
22 into service prior to July 1, 2005 and that results in a
23 plant capacity of three hundred thousand kilowatts or less is
24 exempted from the requirements of this section."

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